

COMMITTEE OF BAR EXAMINERS OPEN SESSION AGENDA ITEM

AGENDA ITEM: December 2014 – O-500

DATE: December 2, 2014

TO: Subcommittee on Moral Character

FROM: Debra Lawson, Director, Moral Character Determinations

SUBJECT: **Proposed *Admissions Rules* Amendments**

BACKGROUND

Rule 4.47 of Title 4, Division 1, Chapter 4 of the *Rules of the State Bar of California (Admissions Rules)*, Appeal of adverse determination of moral character, provides as follows:

(A) An applicant notified of an adverse determination of moral character may file a request for hearing on the determination with the State Bar Court in accordance with the Rules of Procedure of the State Bar on Moral Character Proceedings. The request must be filed with the fee set forth in the Schedule of Charges and Deadlines within sixty days of receipt of the notice of adverse determination.

Rule 4.49 of the *Admissions Rules*, New application following adverse determination of moral character, provides as follows:

The Committee may permit an applicant who has received an adverse moral character determination to file another Application for Determination of Moral Character two years from the date of the Committee's final determination or at some other time set by the Committee, for good cause shown, at the time of its adverse determination.

The Committee of Bar Examiners ("Committee") may wish to consider proposing amendments to these rules to clarify the procedures to be used when applicants seek review of adverse moral character determinations and improve the efficiency of the moral character determination process.

DISCUSSION

An applicant can seek review of the Committee's denial of his or her Application for Determination of Moral Character by requesting a hearing in the State Bar Court Hearing Department, subsequent review by the State Bar Court Review Department

and ultimately the California Supreme Court. The findings of each of these courts is a decision on the merits of the person's Application for Determination of Moral Character.

Admissions Rule 4.47 currently states that an applicant has 60 days from his or her **receipt** of the notice of an adverse moral character determination to request a hearing with the State Bar Court. This is in conflict with the State Bar Rules of Procedure, which require 60 days from **service** of the notice. The Committee may wish to amend the *Admissions Rules* to eliminate this conflict.

Pursuant to *Admissions Rule 4.49*, when the Committee denies a moral character application, the time a person must wait before submitting a new application is calculated from the date of the **Committee's** adverse decision. An applicant may arguably seek to file a new Application for Determination of Moral Character while his or her prior application is being considered in the State Bar Court or the California Supreme Court, or immediately after such proceedings have concluded. The Committee may wish to calculate the time for submission of a new application from the date of a final decision concerning an applicant, regardless of the source of the determination. This would give applicants adequate time to demonstrate rehabilitation following a denial by the Committee or the courts, and it would also improve efficiency since applications would not be double tracked.

RECOMMENDATION

It is recommended that Rule 4.47 be amended to provide that the timing of the applicant's ability to request a State Bar Court hearing will begin when the notice of an adverse determination is served on the applicant. It is also recommended that Rule 4.49 be amended so that the time period for when a previously denied applicant is allowed to submit a new application is calculated from the date of the final determination, rather than the date of the Committee's determination.

PROPOSED MOTION

If the Subcommittee agrees with the recommendation, the following motion is suggested:

Move that the following proposed amendments to the *Admissions Rules* be approved in principle; that a request be submitted to the Board Committee on Admissions and Education to circulate the proposed amendments for a 45-day public comment period; and that following the period of public comment, any comments received and a final version of the proposed amendments be submitted to the Committee for consideration:

Rule 4.47 Appeal of adverse determination of moral character

(A) An applicant notified of an adverse determination of moral character may file a request for hearing on the determination with the State Bar Court in accordance with the Rules of Procedure of

the State Bar on Moral Character Proceedings. The request must be filed with the fee set forth in the Schedule of Charges and Deadlines within sixty days of the date of service ~~receipt~~ of the notice of adverse determination.

Rule 4.49 New application following adverse determination of moral character

The Committee may permit an applicant who has received an adverse moral character determination to file another Application for Determination of Moral Character two years from the date of the ~~Committee's~~ final determination or at some other time set by the Committee, for good cause shown, at the time of its adverse determination.